

Johnson
of Dimmit.
Lange.
McDougald.

Metcalfe.
Wagstaff.
Winningham.

The Speaker then laid House Bill No. 6 before the House on its third reading and final passage.

The bill was read third time, and was passed.

Mrs. Hughes moved to reconsider the vote by which the bill was passed.

The motion to reconsider prevailed

House Bill No. 6 was then passed by the following vote:

Yeas—110

Aikin.	Jefferson.
Alexander.	Johnson
Alsup.	of Anderson.
Atchison.	Jones of Atascosa.
Baker.	Jones of Runnels.
Barron.	Jones of Shelby.
Beck.	Kyle of Hays.
Bourne.	Kyle of Palo Pinto.
Burns.	Laird.
Butler.	Latham.
Calvert.	Lemens.
Camp.	Leonard.
Canon.	Lindsey.
Chastain.	Long.
Clayton.	Lotief.
Colson.	Mackay.
Cowley.	Magee.
Crossley.	McCullough.
Daniel.	McGregor.
Davidson.	McKee.
Dean.	Merritt.
Devall.	Mitcham.
Dunlap.	Moffett.
Duvall.	Moore.
Engelhard.	Morrison.
Fain.	Nicholson.
Ford.	Palmer.
Fuchs.	Parkhouse.
Glass.	Pavlica.
Golson.	Pope.
Good.	Puryear.
Goodman.	Ratliff.
Griffith.	Ray.
Hankamer.	Reader.
Harman.	Reed of Bowie.
Harris.	Reed of Dallas.
Hill.	Renfro.
Hodges.	Riddle.
Holekamp.	Roark.
Holland.	Roberts.
Hoskins.	Rogers
Huddleston.	of Ochiltree.
Hughes.	Rollins.
Hunt.	Russell.
Hunter.	Savage.
Hyder.	Scarborough.
Jackson.	Shannon.
James.	Smith.

Steward.
Stinson.
Stovall.
Stubbeman.
Tarwater.
Tennyson.
Thomas.
Tillery.

Townsend.
Turlington.
Van Zandt.
Walker.
Weinert.
Wells.
Wood.
Young.

Nays—7

Adamson.
Bergman.
Bradley.
Caven.

Graves.
Kayton.
Munson.

Absent

Anderson.
Barrett.
Bedford.
Celaya.
Coombes.
Dwyer.
Greathouse.
Head.
Hicks.
Holloway.

Mathis.
Morse.
Patterson.
Ramsey.
Rogers of Hunt.
Scott.
Shults.
Stanfield.
Vaughan.

Absent—Excused

Cathey.
Dunagan.
Fisher.
Harrison.
Hartzog.
Hester.

Johnson
of Dimmit.
Lange.
McDougald.
Metcalfe.
Wagstaff.
Winningham.

ADJOURNMENT

On motion of Mr. Riddle, the House, at 5 o'clock p. m., adjourned until 10 o'clock a. m., tomorrow.

APPENDIX

STANDING COMMITTEE REPORTS

The Committee on Conservation and Reclamation filed a favorable report on Senate Bill No. 1.

The Committee on Claims and Accounts filed a favorable report on House Bill No. 4.

SIXTH DAY

(Friday, October 19, 1934)

The House met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Speaker Stevenson.

The roll was called, and the following Members were present:

Mr. Speaker.	Jones of Atascosa.
Adamson.	Jones of Runnels.
Aikin.	Jones of Shelby.
Alexander.	Kayton.
Alsup.	Kyle of Hays.
Anderson.	Kyle of Palo Pinto.
Atchison.	Laird.
Baker.	Latham.
Barrett.	Lemens.
Barron.	Leonard.
Beck.	Lindsey.
Bergman.	Long.
Bourne.	Lotief.
Bradley.	Magee.
Burns.	Mathis.
Butler.	McCullough.
Calvert.	McDougald.
Camp.	McGregor.
Canon.	McKee.
Celaya.	Merritt.
Chastain.	Metcalfe.
Clayton.	Mitcham.
Colson.	Moffett.
Coombes.	Moore.
Cowley.	Morrison.
Crossley.	Morse.
Daniel.	Munson.
Davidson.	Nicholson.
Dean.	Palmer.
Devall.	Parkhouse.
Dunlap.	Patterson.
Dunagan.	Pavlica.
Duvall.	Pope.
Dwyer.	Puryear.
Engelhard.	Ramsey.
Fain.	Ratliff.
Ford.	Ray.
Fuchs.	Reader.
Glass.	Reed of Bowie.
Golson.	Reed of Dallas.
Good.	Renfro.
Goodman.	Riddle.
Graves.	Roark.
Griffith.	Roberts.
Hankamer.	Rogers of Hunt.
Harman.	Rogers
Harris.	of Ochiltree.
Hartzog.	Rollins.
Head.	Russell.
Hicks.	Savage.
Hill.	Scarborough.
Hodges.	Scott.
Holekamp.	Shannon.
Holland.	Shults.
Holloway.	Smith.
Hoskins.	Steward.
Huddleston.	Stinson.
Hughes.	Stovall.
Hunt.	Stubbeman.
Hunter.	Tarwater.
Hyder.	Tennyson.
Jackson.	Thomas.
James.	Tillery.
Jefferson.	Townsend.
Johnson	Turlington.
of Anderson.	Van Zandt.

Vaughan.	Wells.
Wagstaff.	Wood.
Walker.	Young.
Weinert.	

Absent—Excused

Bedford.	Johnson
Cathey.	of Dimmit.
Caven.	Lange.
Fisher.	Mackay.
Greathouse.	Stanfield.
Harrison.	Winningham.
Hester.	

A quorum was announced present.

Prayer was offered by Rev. Geo. W. Coltrin, Chaplain.

LEAVES OF ABSENCE GRANTED

The following Members were granted leaves of absence on account of important business:

Mr. Bedford for yesterday, today and tomorrow, on motion of Mr. Tennyson.

Mr. Caven for today, on motion of Mr. Laird.

Mr. Harrison and Mr. Greathouse for today, on motion of Mr. Barron.

Mr. McDougald for today, on motion of Mr. Parkhouse.

Mr. Stanfield for today and tomorrow, on motion of Mr. Patterson.

The following Members were granted leaves of absence on account of illness:

Mr. Mackay for today and tomorrow, on account of illness in his family.

Mr. Fisher for today, on motion of Mr. Alsup.

HOUSE BILLS ON FIRST READING

The following House bills, introduced today, were laid before the House, read severally first time, and referred to the appropriate committees, as follows:

By Mr. Lindsey, Mr. Puryear, Mr. Canon, Mr. Merritt, Mr. Jones of Runnels, Mr. Lotief, Mr. Hoskins, Mr. Thomas, Mr. Fuchs, and Mr. Palmer:

H. B. No. 24, A bill to be entitled "An Act to provide for the licensing of stores in Texas, declaring operation without license to be a misdemeanor, providing penalties for violation, defining the terms 'operate' and 'store,' fixing fees therefor, providing a lien in favor of the State

of Texas, allocating funds derived, imposing certain duties upon the Attorney General, making appropriation, and declaring an emergency."

Referred to Committee on Revenue and Taxation.

By Mr. McCullough:

H. B. No. 25, A bill to be entitled "An Act to amend Article 4769, of the Revised Civil Statutes of 1925, relating to reports of certain life insurance companies, providing for an occupation tax; repealing any and all laws in conflict, and declaring an emergency."

Referred to Committee on Revenue and Taxation.

By Mr. Hankamer, Mr. Jackson, and Mr. Clayton:

H. B. No. 26, A bill to be entitled "An Act amending Article 1976, of Title 42, Chapter 1, of the 1925 Revised Civil Statutes of the State of Texas, so as to provide the actual possession of property not necessary to maintain action provided for in Article 1975, Title 42, Chapter 1, of the 1925 Revised Civil Statutes of Texas; providing the manner of service on defendant or defendants in such action, and declaring an emergency."

Referred to Committee on Judiciary.

RELATIVE TO PUBLICATION OF CERTAIN BOOK

Mr. Parkhouse offered the following resolution:

Whereas, The Membership of the House and Senate has recently received letters from the Book of Texas Company; and

Whereas, The Book of Texas Company proposes to use the names of the Members of the House and Senate in the book as sponsors and endorsers of the publication; and

Whereas, The editor and officers of said book company are unknown to said Members of the House and Senate; and

Whereas, It is the desire of this House that the names of its Members be not used as sponsors of this publication without knowing the purpose and intent of same; now, therefore, be it

Resolved by the House of Representatives, That the Speaker appoint a committee of three Members to investigate the purpose and intent of the officers of the Book of Texas Company and the connection in which the

names of the Members of the House and Senate are to be used, and that the committee report its findings to the House before the end of the Fourth Called Session of the Forty-third Legislature.

PARKHOUSE,
CAMP,
HANKAMER.

The resolution was read second time, and was adopted.

TO PROVIDE FOR AN INVESTIGATION OF RELIEF ORGANIZATION IN TEXAS

The Speaker laid before the House, for consideration at this time, resolution heretofore offered by Mr. Hunter and others, in regard to an investigation of relief organizations of Texas;

The resolution having heretofore been read second time and referred to the Committee on State Affairs;

The Committee on State Affairs having recommended the adoption of the resolution.

Mr. Mathis moved that the resolution be laid on the table subject to call.

Mr. Alsup raised a point of order on further consideration of the resolution, at this time, on the ground that Senate Bill No. 1, which is unfinished business, has precedence over the resolution.

The Speaker sustained the point of order.

SENATE BILL NO. 1 ON SECOND READING

The Speaker laid before the House, on its second reading and passage to third reading,

S. B. No. 1, A bill to be entitled "An Act to aid the Brazos River Conservation and Reclamation District in preparing the necessary plans, specifications and data and in making the necessary surveys, and in acquiring the necessary lands, leases, easements and/or acquittances, and in building or having built and/or co-operating in the building of proper structures, reservoirs and levees suitable for the control, in so far as practicable, of the flood waters of the Brazos River watershed, declared to be a public calamity, granting and donating to said district for a period of twenty years all of the State ad valorem taxes in

the following counties, which otherwise would go into the General Revenue Fund of the State of Texas, viz.: Austin County, Brazoria County, Burleson County, Fort Bend County, Grimes County, Waller County, Washington County, Brazos County, Milam County, and Robertson County, said grant being contingent upon the receiving by said district of a grant and/or loan and/or advancement from the United States of America on or before January 1, 1940, of a sum reasonably sufficient to effect the performance of this Act, in no event to be less than \$30,000,000, and declaring certain things incidental to said purposes, providing for the segregation of said funds in the State Treasury, providing a penalty for the misapplication of the moneys thus donated, providing for the investment of available funds, providing for a system of accounting, providing that said tax diversion is based on 1934 valuation, and providing that Attorney Generals shall have right to meet with commissioners courts in preparing assessments; etc., and declaring an emergency."

The bill was read second time.

Mr. Jones of Atascosa raised the following point of order:

Mr. Speaker: I raise the point of order on Senate Bill No. 1, that the same is unconstitutional for the reason that it merely recites in the body of the bill that a public calamity exists without setting forth any facts to substantiate such statement, and that the same is clearly a release to a defined district in Texas of the taxes of the inhabitants of, or property in, ten named counties in Texas, and is therefore violative of Article VIII, Section 10, of the Constitution of Texas.

The Speaker overruled the point of order.

Mr. Moffett offered the following amendment to the bill:

Amend Senate Bill No. 1, page 8, lines 14 and 18, by striking out the figures "1940," and inserting the figures "1937."

The amendment was adopted.

Mr. Vaughan offered the following amendment to the bill:

Amend Senate Bill No. 1, page 1, line 16, by striking out the word "all," and inserting in lieu thereof the words "twenty-five per cent."

VAUGHAN,
WEINERT.

Mr. Jones of Atascosa raised the following point of order on further consideration of the bill:

Mr. Speaker: I raise the point of order against further consideration of Senate Bill No. 1, for the reason that it seeks to create an indebtedness and continuing obligations against the property in said district for the purpose of effecting improvements, and is violative of Section 10, of Chapter 13, of the Special Laws of the Second Called Session of the Forty-first Legislature, the same being the only authority upon which said corporation could contract, it being nowhere stated in the body of said bill that the provisions of Section 10 hereinabove referred to have been complied with.

The Speaker overruled the point of order.

Mr. Van Zandt moved to table the amendment offered by Mr. Vaughan.

The motion to table prevailed by the following vote:

Yeas—87

Alsup.	Hodges.
Atchison.	Holekamp.
Baker.	Holland.
Barrett.	Holloway.
Bergman.	Huddleston.
Bradley.	Hughes.
Burns.	Hunter.
Butler.	Hyder.
Calvert.	James.
Camp.	Jefferson.
Canon.	Jones of Runnels.
Celaya.	Jones of Shelby.
Chastain.	Kyle of Palo Pinto.
Clayton.	Lemens.
Colson.	Lindsey.
Coombes.	Long.
Cowley.	Mathis.
Davidson.	McCullough.
Dean.	McDougald.
Devall.	McGregor.
Dunlap.	McKee.
Dunagan.	Metcalfe.
Engelhard.	Moffett.
Fain.	Moore.
Ford.	Morse.
Fuchs.	Munson.
Golson.	Nicholson.
Goodman.	Palmer.
Graves.	Parkhouse.
Griffith.	Patterson.
Hankamer.	Ratliff.
Harman.	Ray.
Hartzog.	Reed of Dallas.
Head.	Renfro.
Hicks.	Roark.
Hill.	Rollins.

Russell.	Stubbeman.
Savage.	Tarwater.
Scarborough.	Thomas.
Scott.	Townsend.
Shannon.	Van Zandt.
Smith.	Wells.
Steward.	Young.
Stinson.	

Nays—35

Adamson.	Mitcham.
Aikin.	Morrison.
Alexander.	Puryear.
Beck.	Reed of Bowie.
Bourne.	Riddle.
Crossley.	Roberts.
Daniel.	Rogers of Hunt.
Glass.	Rogers
Harris.	of Ochiltree.
Hoskins.	Shults.
Hunt.	Stovall.
Jackson.	Tennyson.
Jones of Atascosa.	Tillery.
Kyle of Hays.	Vaughan.
Laird.	Wagstaff.
Lotief.	Walker.
Magee.	Weinert.
Merritt.	Wood.

Present—Not Voting

Good.

Absent

Anderson.	Latham.
Barron.	Leonard.
Duvall.	Pavlica.
Dwyer.	Pope.
Johnson	Ramsey.
of Anderson.	Reader.
Kayton.	Turlington.

Absent—Excused

Bedford.	Johnson
Cathey.	of Dimmit.
Caven.	Lange.
Fisher.	Mackay.
Greathouse.	Stanfield.
Harrison.	Winningham.
Hester.	

PAIRED

Mr. Good (present), who would vote "nay," with Mr. Reader (absent), who would vote "yea."

Mr. Aikin raised the following points of order:

Mr. Speaker: I raise the following point of order on Senate Bill No. 1:

That this bill has not passed the Senate in that it did not receive the necessary two-thirds vote required by Section 10, of Article VIII, of the Constitution, quoting Senate Journal of October 17, 1934, page 31, showing that there were barely two-thirds

present, the vote being 17 yeas and 4 nays.

Mr. Speaker: I raise the following point of order on Senate Bill No. 1:

In view of the ruling of the Chair on the point of order just raised and the position of the Chair holding that two-thirds vote is not necessary in this bill, then I take the position, Mr. Speaker, that this can be nothing less than an appropriation bill in that the bill itself uses the following terms: "There is hereby donated and granted," which words are clearly synonymous, used as they are, with the word "appropriated," which, Mr. Speaker, violates Section 6, of Article VIII, of the Constitution, which reads as follows:

"No money shall be drawn from the Treasury, but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years, except by the first Legislature to assemble under this Constitution, which may make the necessary appropriations to carry on the government until the assembling of the Sixteenth Legislature."

I offer in support of this, Mr. Speaker, the following ruling from Hon. Claude Pollard, Attorney General of Texas, dated March 9, 1927:

CONSTITUTIONAL LAW—CONSTRUCTION OF ART. VII, SECTION 10, LEGISLATURE CANNOT RELEASE PERSONS AND PROPERTY FROM TAXES EXCEPT IN CASE OF "GREAT PUBLIC CALAMITY"—WHAT IS "GREAT PUBLIC CALAMITY"—DALLAS, TARRANT, STARR AND TYLER COUNTY BILLS.

Offices of the Attorney General,
March 9, 1927.

Honorable W. S. Barron, House of Representatives, Austin, Texas.

Dear Mr. Barron: You, in conjunction with Messrs. O. L. Parrish, J. A. Merritt, A. H. King, J. C. Rogers and J. F. Wallace, Members of the Legislature, submit to me copies of Senate Bills Nos. 228, 229, and 293, pending before the Fortieth Legislature, and ask for my opinion as to the constitutionality of same.

Senate Bill No. 228 has as its purpose the control of the flood waters of Trinity River, declaring that a

great public calamity exists that requires immediate legislation for the protection of the loss of lives and property; it provides for the issuance of bonds and for the release of a portion of the State ad valorem tax within said district not to exceed 23 cents on the \$100 assessed valuation for a period of twenty-five years from and after December 21, 1928. It, by its terms, is offered under the provisions of Section 10, of Article VIII, of the Constitution. The area of the district is not given in the Act, but my information is that it contains several thousand acres of land.

Senate Bill No. 229 is an Act releasing inhabitants of, and property subject to the taxation of Dallas Levee Improvement District, and Dallas County Levee District No. 5, for a period of twenty-five years from payment of ad valorem taxes levied for State purposes, to prevent great public calamities in said district caused by high waters and overflows. By its terms, it is offered under Section 10, of Article VIII, of the Constitution. The boundaries of this district are not given, but my information is that it likewise contains many thousand acres. This Act states that the property included within the districts involved was, in years 1890, 1908, 1913, 1914, 1915, 1916, 1918, 1920, and 1922, greatly damaged by high water and overflows.

Senate Bill No. 259 is an Act making a grant, or donation to Starr County of a portion of the State ad valorem taxes for a period of twenty-five years, to enable said county to construct levees, etc., to protect it from disastrous and calamitous overflows. It recites that there is a large area of the county subjected practically every year to great damage by high waters and overflows, and a grant is made to the county of all State ad valorem taxes in excess of 5 cents on the \$100 valuation. It is not, by its terms, offered under Section 10 of Article VIII, but must be authorized under it, or it must fail.

Senate Bill No. 293 is an Act granting and donating to Tyler County for a period of fifteen years, that part of the State ad valorem tax in excess of 10 cents on the \$100 valuation. It is stated that the county depository failed, and the county lost a large sum of money by reason of such failure, which has left it in poor financial condition.

These Acts all depend for authority for their enactment upon a proper construction and application of Section 10 of Article VIII of the State Constitution.

I am not unmindful of the matter of public interest involved in the proposed legislation, but with the policy of the law this department has nothing to do. Its functions end with a definite statement of what it conceives to be the law.

The Constitution of 1846, Article VII, Section 27, provided that taxation should be equal and uniform throughout the State, and that all property should be taxed in proportion to its value, "except such property as two-thirds of both Houses of the Legislature may think proper to exempt from taxation."

Section 28 of the same article authorized the Legislature to exempt from taxation \$250 worth of household furniture.

These identical provisions were carried forward into the Constitution of 1861 and of 1866, and appear in both as Article VII, Sections 27 and 28. The provisions in the identical language were also carried forward into the Constitution of 1869, and appear as Article XII, Section 19.

During these years, and prior to the adoption of our present Constitution, the Legislature of Texas exercised rather extensively, its power to exempt property from taxation. This power it had the right to exercise, since no constitutional provision was violated thereby, for in addition to the inherent power of a State Legislature to exempt property from taxation, unless expressly prohibited by the Constitution, the provisions of these Constitutions expressly authorized such exemptions as the Legislature "may think proper." A few of the many instances are given of the exercise of this power.

In 1870, the Legislature incorporated the Washington Fire Engine Company No. 1 of the City of Austin, and expressly provided that its property should be exempt from taxation for State and county purposes. (Gammel's Law, Vol. 6, page 524.) During the same session, an act was passed authorizing one A. M. Nigs to sell, barter, and trade in goods, wares and merchandise anywhere in the State of Texas, free of any State, county or city incorporation tax. (Gammel's Law, Vol. 6, page 639.) At the same session, laws were passed exempting

from taxation the bonds of the United States, and of the corporation of the City of Houston, and all cemetery lots and the property of all churches, Masonic and Odd Fellows' Lodges and other charitable associations. (Gammel's Laws, Vol. 6, page 76.)

Likewise, the capital stock and property of the International Railroad Company was exempted for five years, from August 5, 1870 (Vol. 6, page 109); and the capital stock and property of the Texas Timber & Prairie Railroad Company for ten years after completion (Vol. 6, page 303); and the property of Gymnastic Association of New Braunfels from State, county, occupation or other taxes (Vol. 6, page 320).

The Legislature of 1873 released all State ad valorem and poll taxes that were at that time, or that might thereafter be, assessed against the residents of the counties of Montague, Wise, Parker, Hood, Erath, Hamilton, Lampasas, Burnet, Blanco, Kendall, Bandera, Medina, Frio, McMullen, Duval, Starr and all counties lying west and southwest of same. (Gammel's Law, Vol. 7, page 59.) The basis of the release was stated to be for the purpose of protecting the frontier from the invasion of Indians. The Legislature, of 1875, expressly repealed this law. (Vol. 8, page 382.)

During these years, there were many similar laws, evidencing an unlimited extensive exercise of its power to exempt persons and property from taxation, and many Acts making donations to counties, and authorizing counties to issue bonds for the purpose of promotion of railroads construction, etc.

These constitutional provisions and this legislative history constitutes the background of the provision we are called upon to construe.

As a future protection against legislative action as it relates to the matter of taxation and the public funds, there was incorporated into the Constitution of 1876 several provisions which are pertinent in construing the one before us. As to granting of public money to individuals or counties, Article V, Section 51 of the original Constitution of 1876, provided that "the Legislature shall have no power to make any grant, or to authorize the making of any grant of public money to any individual, association or individual, municipal or other corporation whatsoever; provided, that

this shall not be so construed as to prevent the grant of aid in case of a public calamity."

This article was amended in 1912, and the words: "provided, that this shall not be so construed as to prevent the grant of aid in case of public calamity," were eliminated. As amended, this particular article of the Constitution could have but one construction, and that is, that the Legislature cannot, in any event, make any grant, or authorize the making of any grant of public money to any individual, association of individuals, municipal, or other corporation whatsoever; even in case of a public calamity.

Therefore, if by any rule of construction, the provisions of these Acts might be brought under the terms of this section of the Constitution, there is clearly no authority in the Legislature to enact them. Senate Bill No. 259 relating to Starr County, and Senate Bill No. 293, relating to Tyler County, purport by their very terms to be a grant by the State to those counties of a portion of the ad valorem taxes of said counties, constituting the revenues of the State; and therefore, if in truth and in fact, these Acts are to be construed as their terms indicate, is the purpose of the law, they must both fall under this provision of the Constitution.

Going further, in an effort to guard against the evils which had existed therefore, Section 55, of Article III, prohibits the Legislature in any event from releasing, extinguishing, in whole or in part, the indebtedness, liability or obligation of any incorporation, or individual, to the State, or to any county, or other municipal corporation therein.

While this provision of the Constitution does not directly bear upon the question before us, it is important as indicating the extent to which the framers of the Constitution endeavored to go in protecting the public revenues from donation to individuals or municipalities, either directly or through the release of any indebtedness lawfully owing by them to the State. An indebtedness for taxes due to the State, or to the county, or to any other municipal corporation, is a debt under this provision of the Constitution, which the Legislature has no power to release or extinguish.

Two of the Acts in question expressly purport to have as a basis for authority of enactment, Article VIII,

Section 10, which was contained for the first time in the Constitution of 1876, and all of them must stand or fall under it. It is as follows:

"The Legislature shall have no power to release the inhabitants of or property in any county, city or town, from the payment of taxes levied for State, or county purposes, unless in case of great public calamity in such county, city or town, when such release is made by a vote of two-thirds of each House of the Legislature."

This is a prohibitory provision of the Constitution and the proponents of the bills must come within the exception to this express prohibition in the Constitution. It is proposed to enact these bills on the assumption that they come within the exception; in that, the purpose and intent of the Acts is to relieve counties, cities, and towns against a "great public calamity."

The Constitution of 1876, containing this provision, became effective on the 18th day of April of that year. Within less than four months after it became effective, the Legislature of Texas was presented with a situation which required a construction and application of it, arising by reason of a cyclone or storm of wind and rain in Montague County on the 5th day of May of that year. On August 15th, it passed an Act "for the relief of the citizens of Montague County," based upon statements contained in the Act, that the storm had almost entirely destroyed the dwellings, fences, barns, personal property and growing crops of the inhabitants of the county, and based on this "great public calamity" it released the taxes for the years of 1876 and 1877. (Gammel's Laws, Vol. 8, page 1294.)

At the same Session of the Legislature, an Act was passed to "release from taxation the property of certain citizens of Matagorda and Brazoria Counties, located within a certain particular territory, by reason of the calamitous storm upon the coast in September, 1875, and the release was from taxes for 1876 only. (Gammel's Laws, Vol. 8, page 1295.)

At the same Session of the Legislature, the persons and property of the town of Indianola, in Calhoun County, were exempt from taxation for the year of 1876 by reason of the same storm. (Vol. 8, page 1296.)

These Acts of the Legislature, coming within so short a time after the adoption of the Constitution, clearly indicate the intent of the provision under consideration, as understood by the Legislature. It is noted that the "great public calamities" involved were storms and cyclones, unexpectedly occurring, disastrously affecting whole communities, and that the release from taxation was for only two years for the purpose of enabling those who had been injured by the calamity to recover from its disastrous effects.

The Twenty-eighth Legislature, in 1903, passed an Act releasing the town of Goliad from State and county taxes for the year of 1902 by reason of a cyclone of most unusual and terrific violence, resulting in great loss of life and the destruction of property. The same Legislature donated to Brazoria County the State ad valorem and a portion of the occupation taxes for the period of two years, on account of the terrific and destructive hurricane of 1900.

The same Legislature passed an Act donating taxes to the City of Galveston by reason of the same great public calamity; this donation being for a period of fifteen years.

The Thirty-fifth Legislature passed an Act remitting State taxes to the City of Paris in Lamar County, for five years, by reason of a calamitous fire, which destroyed all municipal buildings, including the courthouse, schoolhouses, etc., churches and hundreds of homes, and the entire business district.

The same Legislature remitted a portion of the State taxes to the Garrison Independent School District for a period of five years, by reason of a calamitous fire which destroyed all of the buildings and equipment of the district.

Each of these Acts clearly came within the provisions of the Constitution under consideration, because there was presented to the Legislature a situation which disclosed that a great public calamity had occurred, calling for the exercise of its power for the releasing of persons and property from taxes.

It is significant that in none of these instances was the release granted for any considerable time, except that of Galveston, and authority to grant relief to it cannot be disputed in view of the great public ca-

lamity, relief against which was sought.

Under the provisions of an entirely separate section of the Constitution, viz.: Section 8, of Article XI, which authorizes the Legislature to grant aid to counties and cities on the Gulf Coast, several Acts have been passed remitting State and county taxes, to-wit: that of the Thirty-fifth Legislature to Corpus Christi; that of the Thirty-sixth Legislature to Aransas Pass; that of the Thirty-sixth Legislature to Rockport; that of the Thirty-sixth Legislature to Port Lavaca, and of the same Legislature to Freeport, and of the Thirty-seventh Legislature to Corpus Christi, but the authority to act in these instances is based upon a different constitutional grant.

In addition to the Acts above mentioned, the Thirty-eighth Legislature passed an Act releasing State taxes to the inhabitants of Hidalgo County for twenty-five years, and of Wharton and Matagorda Counties; and the Thirty-ninth Legislature passed an Act remitting taxes to Cameron and Willacy Counties. In the last mentioned Act, the authority is based upon the provision of the Constitution authorizing the granting of relief to counties upon the Gulf Coast.

In the Act relating to Wharton County, and a part of Matagorda County, the authority is based upon Section 10 of Article VIII, and likewise, any authority for passing the Act relating to Hidalgo County must be based upon the same provision of the Constitution, and in fact, by its very terms, is so based.

As to Hidalgo County, it was stated in the Act that during the preceding year, there had been a calamitous overflow, whereby great property damage was done and many inhabitants drowned.

The above constitutes the legislative history under Article VIII, Section 10, of the Constitution, as well as under Article II, Section —. With the exception of the relief granted to Wharton and Hidalgo Counties, the Legislature has never exercised any power under Article VIII, Section 10, except to relieve against a "great public calamity" that had already occurred. I refrain from discussing the two exceptions to this history, as they are not before me.

A proper conclusion, of course, depends on what is meant by the words: "great public calamity." "Calamity" is defined to be "any occurrence, es-

pecially when sudden and unexpected, that causes great or widespread distress, trouble or affliction to individuals, or to the community, as the failure of crops, an earthquake, the devastation of war or plague, or an extensive fire or flood." (Corpus Juris, Vol. 9, page 1116.) It is further defined as: "any great misfortune, or cause of misery—generally applied to events or disasters which produce extensive evil, either to communities or individuals." (Webster's Revised Unabridged Dictionary.)

I think the words were used as indicated in the construction given them by the Legislature of 1876, and succeeding ones, except those of recent years, as meaning "sudden and unexpected events which produce widespread distress or loss." I do not think it was ever intended by the framers of the Constitution that permanent existing conditions, although unfortunate, and although occasionally causing loss of property, were intended to be corrected by the release of the property located therein, from the payment of taxes. I do not believe that the framers of the Constitution intended to grant to the Legislature the power to release property from taxes during long periods of future time, solely by reason of the fact that the property might be located at some place where it was subject to overflows from year to year. If this is the correct interpretation of the Constitution, there could scarcely be found, in certain portions of this State, a single county which would not have the right to have its inhabitants and property, within certain defined territories of it, released from taxes. There are in many counties in this State, land so located as that it is subject to periodical overflows, creating great loss of property, but this permanent situation of property in relation to streams which makes it subject to overflow, is not such an occurrence, or event, or happening as could be brought within the term: "great public calamity." What is the "great public calamity," relief from which is sought to be given in the Acts presented? In one of the bills (Senate Bill No. 229), there is the statement that during several years, the last being five years ago, certain property overflowed and great damage was done; in two others (Senate Bills Nos. 228 and 259), that a large area of productive and cultivated land is subject to damage by

overflow; and in the other (Senate Bill No. 293), that the county depository has failed.

Not being influenced by the consideration of public good which might be accomplished by legislation, I am of the opinion that none of these situations come within the provisions of the Constitution, that gives the Legislature power to release persons and property from taxation, in case of "great public calamity."

Under the provision of the Constitution the Legislature would not have the power to release the inhabitants of, or property in any county, city or town, from taxes, except to grant relief for a calamity that has already occurred, and would not have the power under this provision of the Constitution, to release from taxes so as to prevent a possible occurrence of a great public calamity in the future. The provision is one to cover emergencies, sudden and unexpected occurrences of events, and disasters which produce great and widespread distress and loss to whole communities.

My attention has been directed to the decision of the Supreme Court in the case of Aransas Pass vs. Keeling, 112 Texas, 339, as an authority for this legislation. The Act under consideration in this case granted to Aransas County the ad valorem taxes for a period of twenty years. This Act, as heretofore indicated, was passed under a provision of the Constitution entirely different from the one we are now considering (Section 8, Article II), which provided that as the counties and cities on the Gulf Coast were subject to calamitous overflows, the Legislature was expressly authorized to aid, either by donation of the domain, or in such other mode as may be provided by law, the construction of sea walls, etc. There is nothing involved in this case at all pertinent to a construction of Section 10, Article VIII.

It is true that the court considered the facts of the particular case before it, in order to determine as to whether or not it was authorized under the following provision of the Constitution:

"The counties and cities on the Gulf Coast being subject to calamitous overflows, and a very large proportion of the general revenue being derived from those otherwise prosperous localities, the Legislature is specially authorized to aid

* * * the construction of sea walls, etc."

The court held that the remission of a portion of the State ad valorem taxes upon the property of San Patricio County, which bordered upon the Gulf Coast, was authorized under this section of the Constitution. It is to be noted, however, that this constitutional provision expressly states the location of the counties and cities that might receive aid, and the reason why; that is, counties and cities on the Gulf Coast, and because they were subject to calamitous overflows.

The court referred to Article VIII, Section 10, of the Constitution, as being a related provision, authorizing relief in certain cases, but there is nothing in this opinion which would indicate that the court thought that because a county or city in other portions of the State might be subject to calamitous overflow, it would come within the provisions of Section 10, Article VIII, authorizing a release of taxes in case of a great public calamity.

The right of a State Legislature to limit its power of taxation, and to exempt persons and property from taxation, is inherent, unless there is a prohibition in the Constitution. In our State it has been uniformly held that this power is not unlimited, and that under the provision that "taxation shall be equal and uniform," the Legislature has no power to exempt any person or property, unless it is expressly authorized so to do by some provision of the Constitution.

We are here confronted with an express prohibition against release from taxation, and the contemporaneous construction of the provision by the Legislature of the State, as we have heretofore indicated, is not such as to justify the view that it was ever intended to be applied to permanent existing situations, as attempted in the Acts before us, but only a temporary relief against widespread disaster by reason of an unexpected emergency.

My attention has also been directed to Article XVI, Section 59, which relates to the conservation and development of the natural resources of the State, including the control, storing, preservation, and distribution of its storm and flood waters, and the creation of conservation and reclamation districts; and it is suggested that the provision that authorizes the Legisla-

ture to pass "all such laws as may be appropriate thereto" would justify the passage of the Acts under consideration. I do not believe this provision of the Constitution can be so construed.

The purposes of the two provisions are entirely different. Two of the Acts under consideration expressly purport to be justified under Article VIII, Section 10, as relief against great public calamities. The purpose of Article XVI, Section 59, is the organization of districts and the issuance of bonds to provide for the use of storm and flood waters; for irrigation and the reclamation and irrigation of arid lands; for the reclamation and drainage of overflowed lands and the conservation and development of forests, which is an entirely different purpose from that of granting relief by reason of calamitous overflows. One involves progressive development of the State by the preservation of its natural resources; the other involves relief from disasters by reason of a great public calamity.

While the Legislature has never been put to the necessity of seeking constitutional authority for its enactments, specific prohibitions against the exercise of power by it, must be construed strongly against its exercise, and its right to act must come clearly within the provisions of an exception to the express prohibition. The wisdom or policy of a law is entirely within its cognizance, but the fact that the constitutional provision under consideration requires, for the exercise of its power, a vote of two-thirds of each House, clearly indicates that the people demanded that an undoubted right to come within the exception should exist.

As to how far the courts will go in determining as to whether or not the Legislature has exceeded its power in passing upon facts necessary to its exercise, is quite uncertain.

It has been suggested that when the Legislature acts in the matters under consideration, that the courts would have no authority to go behind the enactment to determine as to whether or not there existed a great public calamity authorizing the law.

I do not agree with this contention, and am of the opinion that if, after the Legislature enacts the bills under consideration, it should appear in any contest in the courts that the necessary facts did not exist to au-

thorize their enactment, the courts would hold them invalid, and would consider the facts to determine the issue. Otherwise, the Legislature might, at any time, declare that in any certain city, town or county, a great public calamity existed, and release the persons and property therein from taxation. The fact that the Constitution requires a two-thirds vote, in order to pass the law, does not militate, I think, against the principle that the Act of the Legislature in passing the law does not close the door of an attack upon it for failure of conditions that would authorize its enactment.

In view of the public interest involved, I have given most careful consideration to the question submitted, and have conferred freely with, and had the briefs of, attorneys interested for their clients in a contrary view, but I am convinced that neither of these Acts may be enacted by the Legislature, without a violation of the constitutional provision.

Respectfully submitted,

.....
Attorney General of Texas.

When this bill was placed on third reading and final passage, September 18, 1934, which is now Senate Bill No. 1, the vote was 13 yeas and 12 nays.

The point of order was raised that a two-thirds majority vote was necessary to pass a bill of this kind, it being contended by the opponents that the bill was governed by Section 10, of Article VIII, of the Constitution, which authorizes the release of ad valorem taxes in cases of great public calamity, and provides that a two-thirds majority vote shall be necessary. The proponents contended that a majority only was required, and recited for authority the ruling of the Speaker of the House, quoted in the House Journal of February 4, 1925, page 365.

In overruling the point of order, the Speaker of the House relied upon an opinion of the Attorney General, dated January 30, 1925, signed by L. C. Sutton, Assistant Attorney General, and approved by Dan Moody, Attorney General.

The Attorney General held that a two-thirds majority was not necessary, and cited for his authority the case of Aransas Pass et al. vs. Keeling, 112 Texas, 339. The Aransas Pass case is not in point. The Act

the Legislature passed upon in that case was enacted under Section 8, of Article XI, of the Constitution, which gives special authority to the Legislature to aid counties and cities on the Gulf Coast, and does not require a two-thirds vote as does Section 10, of Article VIII.

Since that opinion was rendered, and subsequent to the opinion of the Attorney General above referred to, the Honorable Claude Pollard, Attorney General, on March 9, 1927, rendered an opinion construing several measures similar to the one now under consideration (Senate Bill No. nine (9), in which he held that such measures could not be enacted under the "calamity provision" of the Constitution. (Section 10, Article VIII.) This is a very learned opinion, and it deals with the subject at great length. (Copy of the opinion is attached hereto.)

During the debate on this bill in the Senate, the proponents referred to what is known as the Hidalgo County Case (Martin vs. Hidalgo County, 271 S. W., 436) sustaining their position that such measures may be passed under the "calamity provision" of the Constitution. The case does not so hold. It simply said that legislative determination of the existence of great public calamity is conclusive on courts.

The Members of the Legislature should be informed as to the contents of the Pollard opinion, as well as the points of order raised in the Senate, as a guide to an intelligent vote on this measure.

The State can extend financial aid to counties, cities or districts only in the following ways:

1. A grant of public money under Section 51, of Article III, in case of public calamity. But note that this would come within Section 6, of Article VIII, which prohibits the drawing of any money from the Treasury except by specific appropriations for not longer than two years.

2. Relief by the State to counties and cities on the Gulf Coast is authorized by Section 8, of Article XI. The Supreme Court of Texas held in the case of City of Aransas Pass vs. Keeling, 122 Texas, 339, that the donation of taxes to Aransas Pass was justified under this Section 8, of Article XI, and being thus authorized was not limited by Section 6, of Article VIII, that there must be an appropriation for only two years. Note

that this case does not hold that a grant under Section 51, of Article III, would be free from Section 6, of Article VIII.

3. Release of taxes under Section 10, of Article VIII, in case of a public calamity. Under the specific terms of the constitutional provision the vote must be by two-thirds of each House.

4. The use of State money for governmental purposes through a county or governmental agency. In the case of Road District vs. Allred, 68 S. W. (2d), 164, it was held that the State could not extend aid to a road district to reimburse it for bond money which was not spent on State highways. This was an opinion of the Commission of Appeals and the opinion was adopted by the Supreme Court. Relief under this power depends upon what the court construes to be a governmental purpose. Since Section 59-a, of Article XVI, authorizes the creation of water conservation, etc., districts, and specifically provides for district bonds, it is difficult to see how the implied power of the State to pay the cost could be justified. The district financing would seem to preclude State financing.

See also Jones vs. Alexander, 122 Texas, 328, Com. App., opinion by Sharp, adopted by Supreme Court. "The Constitution prohibits the Legislature from appropriating public money to other than strictly governmental purposes."

The proponents of a bill to "donate" taxes for a number of years say that this is not a release under Section 10, of Article VIII. But this is a very technical attitude for the State; never, in fact, have the taxes been paid into the State Treasury, and for that reason the action is really a release and not a donation. Is it possible that the Supreme Court, by saying in the Aransas Pass Case that the action was a "donation" under Section 8, of Article XI, clouded the issue? If so, then, a "donation" can be authorized only under that section of the Constitution in which the very word "donation" is used. It is significant that the word "donation" is used only in Section 8, of Article XI, and is not used in Sections 50, 51, 52, 53, etc., of Article III, but, instead, the terms "grant of public money" are used. In Section 10, of Article VIII, "re-

lease" of taxes is the expression used.

If it is brought to the attention of proponents of so-called donations of taxes (not under Section 8 of Article X), that such donations can last for only two years under Section 6 of Article VIII, and then only for public calamity, they might be more cautious.

The Speaker overruled the points of order, stating his reasons as follows:

The point of order raised by the gentleman from Lamar, Mr. Aikin, the one raised by the gentleman from Atascosa, Mr. Jones, and that raised by the gentleman from Hunt, Mr. Vaughan, all attack the constitutionality of Senate Bill No. 1. It is contended that the bill violates several provisions of the State Constitution. None of these involve questions of procedure, however, in the passage of the bill. If any constitutional provision has been violated, it is one which can be considered by the courts. It does not appear that the courts have passed on several points involved. The Aransas Pass Case (112 Texas, 339), is persuasive in its language but not decisive of the points involved here. The opinions of two former Attorneys General have been presented during this argument. Each has been given careful consideration. These opinions do not agree in either reasoning or conclusion. They but illustrate the well known fact that the best of lawyers often disagree as to what the law is.

By the terms of Section 59 of Article XVI, Constitution, the control, storing, preservation and distribution of the storm and flood waters of this State, among other things, are declared to be public rights and duties. Subsection b, of said Section 59, appears to make conservation and reclamation districts governmental agencies, with such powers of government as may be conferred by law. In *Road District vs. Allred*, 68 S. W. (2d), 164, Judge Critz indicates that it is the settled law of this State that the Constitution does not prevent the appropriation or granting of State funds to municipal and political corporations when the money is granted to be used for a governmental purpose. It does not affirmatively appear to the Chair, therefore, that Senate Bill No. 1 is unconstitutional. When the courts have clearly decided a question of law, it is the duty of

the Chair to give consideration to such decision. It is also the duty of the Chair to uphold the Constitution at all times. The matter here presented has not been clearly determined.

Since the questions raised by the several points of order referred to are of such importance, the Chair has decided that all of them should be considered by the courts in the event the bill should pass. In the absence of any direct pronouncement by the courts, the Chair would be assuming functions that he does not have, were he to sustain the several points of order, or any of them. The Chair is of the opinion that since the courts have decided that they will not look behind the enrolled bill in determining whether the constitutional requirements have been observed in its passage, it is incumbent on the Speaker to pass promptly on constitutional requirements of procedure. But there is no constitutional requirement of procedure involved in disposing of the points of order referred to. Each of them goes to the substantive matter embraced in the terms of the bill. The Chair thinks that each of them presents a question of such importance that the courts ought to be allowed to consider the same, in the event the House passes the bill; and the Chair therefore overrules each of the points of order referred to. This is the position taken by the Chair on other points of order raising similar questions and is again adhered to with what the Chair hopes is consistency.

INVITING RUTH BRYAN OWEN TO ADDRESS THE HOUSE

Mr. Patterson offered the following resolution:

Whereas, Ruth Bryan Owen, daughter of William Jennings Bryan, and former Congresswoman from Florida and Minister to Denmark, will be in Austin, Monday, October 22nd; therefore, be it

Resolved by the House of Representatives, That she be invited to speak before the House at a time to suit her convenience.

PATTERSON,
HUGHES.

The resolution was read second time, and was adopted.

RECESS

On motion of Mr. Wells, the House, at 12 o'clock m., took recess to 2 o'clock p. m., today.

AFTERNOON SESSION

The House met at 2 o'clock p. m., and was called to order by Speaker Stevenson.

ADJOURNMENT

Mr. Alsup moved that the House adjourn until 10 o'clock a. m., next Monday.

The motion prevailed.

The House, accordingly, at 2:15 o'clock p. m., adjourned until 10 o'clock a. m., next Monday.

APPENDIX

STANDING COMMITTEE REPORTS

The Committee on Judiciary filed a favorable report on House Bill No. 26.

REPORTS OF THE COMMITTEE
ON ENGROSSED BILLS

Committee Room,
Austin, Texas, October 17, 1934.

Hon. Coke Stevenson, Speaker of the House of Representatives.

Sir: Your Committee on Engrossed Bills, to whom was referred

H. B. No. 7, A bill to be entitled "An Act for the purpose of releasing the interest and penalties on all delinquent ad valorem and poll taxes that were delinquent on or before August 1, 1934, due the State, any county, city school district, road district, levee improvement district, water improvement district, and water control and improvement district, irrigation district and other defined subdivisions of the State; provided same are paid on or before March 31, 1935, with an addition of one per cent (1%) on said taxes; provided said taxes are paid after March 31, 1935, and on or before December 31, 1935, with an addition of two per cent (2%) on said taxes; etc., and declaring an emergency,"

Has carefully compared same, and finds it correctly engrossed.

PARKHOUSE, Acting Chairman.

Committee Room,
Austin, Texas, October 18, 1934.

Hon. Coke Stevenson, Speaker of the House of Representatives.

Sir: Your Committee on Engrossed Bills, to whom was referred

H. B. No. 6, "An Act releasing interest and penalties on ad valorem and poll taxes that were delinquent on or before October 1, 1934, due the State, any county, common school district, road district, levee improvement district, water improvement district, water control and improvement district, irrigation district, and other defined subdivisions of the State, provided same are paid on or before January 31, 1935; provided said taxes are paid during the month of February, 1935, with an addition of one per cent (1%) penalty thereon; provided said taxes are paid during the month of March, 1935, with an addition of two per cent (2%) penalty thereon; provided said taxes are paid during the month of April, 1935, with an addition of three cent (3%) penalty thereon; etc., and declaring an emergency,"

Has carefully compared same, and finds it correctly engrossed.

HYDER, Vice-Chairman.

SEVENTH DAY

(Monday, October 22, 1934)

The House met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Speaker Stevenson.

The roll was called, and the following Members were present:

Mr. Speaker.	Dean.
Adamson.	Devall.
Aikin.	Dunlap.
Alexander.	Dunagan.
Alsup.	Dwyer.
Atchison.	Engelhard.
Baker.	Fain.
Barrett.	Fuchs.
Barron.	Glass.
Beck.	Golson.
Bedford.	Good.
Bergman.	Goodman.
Bourne.	Graves.
Bradley.	Greathouse.
Burns.	Griffith.
Butler.	Hankamer.
Calvert.	Harman.
Camp.	Harris.
Canon.	Hartzog.
Celaya.	Head.
Chastain.	Hicks.
Clayton.	Hill.
Colson.	Hodges.
Coombes.	Holekamp.
Cowley.	Holland.
Crossley.	Holloway.
Daniel.	Hoskins.
Davidson.	Huddleston.